

AMENDED IN SENATE APRIL 5, 2006

SENATE BILL

No. 1116

Introduced by Senator Scott
(Coauthors: Senators Kuehl and Romero)
(Coauthors: Assembly Members Koretz and Pavley)

January 4, 2006

An act to amend Sections 2352 and, 2540, 2543, 2590, and 2591 of, and to add Sections 2352.5 and 2591.5 to, the Probate Code, relating to conservatorships.

LEGISLATIVE COUNSEL'S DIGEST

SB 1116, as amended, Scott. Conservatorships.

(1) Existing law generally authorizes a *guardian or* conservator to fix the residence of a conservatee *or ward* within the state without permission of the court, by selecting the least restrictive appropriate setting, as specified, that is in the best interests of the conservatee. *Existing law requires the guardian or conservator to promptly give notice of all changes in the residence of a conservatee or ward.*

~~The bill would require a conservator, prior to sale of real property of a conservatee and placement of the conservatee in a group home, nursing facility, or other residential care facility, to obtain from a licensed realtor at least 2 market valuations of the conservatee's real property proposed for sale, and submit those valuations, along with specified written documentation, to the court for review and authorization.~~

This bill would require a presumption that the least restrictive appropriate setting for the conservatee is the personal residence of that conservatee. This bill would require a conservator to evaluate the level of care and measures necessary to keep the conservatee in his or

her personal residence or explain the limitations or restrictions regarding a return to the conservatee to his or her personal residence. This bill would require the guardian or conservator to file notice of the change of address for a ward or conservatee in 30 days. This bill would require the Judicial Council to develop a form consistent with this provision by January 1, 2008.

(2) Existing law provides that sales of real or personal property of the estate of a conservatee are subject to authorization, confirmation, or direction of the court, except as otherwise provided and except for the sale of a conservatee's personal residence. In seeking authorization to sell a conservatee's present or former personal residence, the conservator is required to notify the court that the personal residence is proposed to be sold and that the conservator has discussed the proposed sale with the conservatee, among other requirements.

~~The bill would expand that provision to apply to all of the conservatee's real property. The bill would also require the conservator, within 30 days upon completion of a sale of a conservatee's real property, to submit in writing to the court a confirmation of the sale price of the real property and any commissions paid, and to whom those commissions are paid.~~

This bill would revise the provisions for the proposed sale of the personal residence of a conservatee and require a conservator to publish and post a notice of sale, reappraisal for sale, minimum offer price, and other information related to the sale of the personal residence, as specified. This bill would delete restrictions regarding the sale of the personal residence of the conservatee related to contracts with and compensation of agents, brokers, and auctioneers, and restrictions regarding the sale of personal property.

(3) Under existing law, the court, in its discretion, may make an order granting a conservator one or more powers, as specified, for the advantage, benefit, and best interest of the estate of the conservatee. These powers include the sale of real property of the estate.

This bill would additionally require that the sale of the personal residence of a conservatee, including the terms of sale and price, to be in the best interest of the conservatee, that the sale of that personal residence shall comply with requirements for appraisal and minimum offer price, and other conditions, as specified.

(4) *This bill would make related, nonsubstantive and clarifying changes.*

Vote: majority. Appropriation: no. Fiscal committee: ~~no~~ yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

SECTION 1. Section 2352 of the Probate Code is amended to read:

2352. (a) The guardian ~~or conservator~~ may fix the residence of the ward ~~or conservatee~~ at ~~either of the following:~~

~~(1) Any~~ any place within this state without the permission of the court. In fixing the residence, the guardian ~~or conservator~~ shall select the least restrictive appropriate setting ~~which that~~ is available and necessary to meet the needs of the ward ~~or conservatee~~, and ~~which that~~ is in the best interests of the ward ~~or conservatee~~. ~~In making a determination of the appropriate level of care for wards or conservatees, guardians or conservators may utilize the statewide nursing home preadmission screening program or a comparable assessment by a community-based case management organization.~~

(b) The conservator may fix the residence of the conservatee at any place within this state without the permission of the court. In fixing the residence, the conservator shall select the least restrictive appropriate setting, as described in Section 2352.5, that is available and necessary to meet the needs of the conservatee, and that is in the best interests of the conservatee.

~~(2) A place not within this state if~~
(c) If permission of the court is first obtained, a guardian or conservator may fix the residence of a ward or conservatee at a place not within this state.

~~(b)~~
(d) An order under paragraph (2) of subdivision (a) (c) shall require the guardian or conservator either to return the ward or conservatee to this state, or to cause a guardianship or conservatorship proceeding or its equivalent to be commenced in the place of the new residence, when the ward or conservatee has resided in the place of new residence for a period of four months or such a longer or shorter period as is specified in the order.

~~(e) The guardian or conservator shall promptly mail to the court notice of all changes in the residence of the ward or conservatee.~~

~~(d) Notwithstanding subdivision (a) and any other provision, a conservator, prior to the sale of real property of a conservatee and placement of the conservatee in a group home, nursing facility, or other residential care facility, shall obtain from a licensed realtor at least two market valuations of the real property of the conservatee proposed for sale and shall submit those valuations, along with written documentation of the alternatives to the sale that were considered, such as in-home support services, to the court for review and authorization.~~

(e) The guardian or conservator shall file a notice of change of residence with the court within 30 days of the date of the change. The conservator shall include in the notice of change of residence a declaration stating that the conservatee's change of residence is consistent with the standard described in subdivision (b). The guardian or conservator shall mail a copy of the notice to all persons entitled to notice under subdivision (b) of Section 1511 or subdivision (b) of Section 1822 and shall file proof of service of the notice with the court. The Judicial Council shall, no later than January 1, 2008, develop a form notice and declaration to be used for this purpose.

~~(e)~~

(f) This section does not apply where the court has made an order under Section 2351 pursuant to which the conservatee retains the right to fix his or her own residence.

SEC. 2. Section 2352.5 is added to the Probate Code, to read:

2352.5. (a) It shall be presumed that the personal residence of the conservatee at the time of commencement of the proceeding is the least restrictive appropriate setting for the conservatee, in the absence of a showing to the contrary by the petitioner for conservatorship or conservator.

(b) Upon appointment, the conservator shall determine the appropriate level of care for the conservatee.

(1) The determination of the conservator shall include an evaluation of the level of care existing at the time of commencement of the proceeding and the measures that would be necessary to keep the conservatee in his or her personal residence.

(2) If the conservatee is living at a location other than his or her personal residence at the commencement of the proceeding, the determination of the conservator shall either include a plan

1 *to return the conservatee to his or her personal residence or*
2 *explain the limitations or restrictions regarding a return of the*
3 *conservatee to his or her personal residence in the foreseeable*
4 *future.*

5 *(c) The conservator shall evaluate the conservatee's*
6 *placement and level of care if there is a material change in*
7 *circumstances affecting the conservatee's needs for placement*
8 *and care.*

9 **SEC. 2.**

10 **SEC. 3.** Section 2540 of the Probate Code is amended to read:

11 2540. (a) Except as otherwise provided in Sections ~~2352,~~
12 ~~2544,~~ and 2545, and except for the sale of a conservatee's ~~real~~
13 ~~property present or former personal residence~~ as set forth in
14 subdivision (b), sales of real or personal property of the estate
15 under this article are subject to authorization, confirmation, or
16 direction of the court, as provided in this article.

17 (b) In seeking authorization to sell a conservatee's ~~real~~
18 ~~property present or former personal residence~~, the conservator
19 shall notify the court that the ~~real property present or former~~
20 ~~personal residence~~ is proposed to be sold and that the
21 conservator has discussed the proposed sale with the conservatee.
22 In addition, the conservator shall inform the court whether the
23 conservatee supports or is opposed to the proposed sale and shall
24 describe the circumstances that necessitate the proposed sale,
25 including whether the conservatee has the ability to live in the
26 ~~real property.~~ *personal residence and why other alternatives,*
27 *including but not limited to in-home supportive services, are not*
28 *available.* The court, in its discretion, may require the court
29 investigator to discuss the proposed sale with the conservatee.
30 This subdivision shall not apply when the conservator is granted
31 the power to sell real property of the estate pursuant to ~~Section~~
32 ~~2590~~ *Article 11 (commencing with Section 2590).*

33 ~~(c) Upon completion of a sale of a conservatee's real property,~~
34 ~~within 30 days the conservator shall submit in writing to the~~
35 ~~court a confirmation of the sale price of the real property, and~~
36 ~~any commissions paid, and to whom those commission are paid.~~

37 **SEC. 4.** Section 2543 of the Probate Code is amended to
38 read:

39 2543. (a) If estate property is required or permitted to be
40 sold, the guardian or conservator may:

1 (1) Use discretion as to which property to sell first.

2 (2) Sell the entire interest of the estate in the property or any
3 lesser interest therein.

4 (3) Sell the property either at public auction or private sale.

5 (b) Subject to Section 1469, unless otherwise specifically
6 provided in this article, all proceedings concerning sales by
7 guardians or conservators, ~~giving publishing and posting notice~~
8 of sale, ~~reappraisal for sale, minimum offer price for the~~
9 ~~property, reselling the same property, return report of sale and~~
10 ~~application petition for confirmation thereof, of sale, and notice~~
11 ~~and hearing of such application of that petition~~, making orders
12 authorizing sales, rejecting or confirming sales and reports of
13 sales, ordering and making conveyances of property sold, and
14 allowance of commissions, shall conform, as nearly as may be, to
15 the provisions of this code concerning sales by a personal
16 representative, ~~other than as described in Articles 6 (commencing~~
17 ~~with Section 103800), 7 (commencing with Section 10350), 8~~
18 ~~(commencing with Section 10360), and 9 (commencing with~~
19 ~~Section 10380) of Chapter 18 of Part 5 of Division 7. The~~
20 ~~provisions concerning sales by a personal representative as~~
21 ~~described in the Independent Administration of Estates Act, Part~~
22 ~~6 (commencing with Section 10400) of Division 7 shall not~~
23 ~~apply to this subdivision.~~

24 (c) The clerk of the court shall cause notice to be posted
25 pursuant to subdivision (b) only in the following cases:

26 (1) ~~Where~~ ~~If~~ posting of notice of hearing is required on a
27 petition for the confirmation of a sale of real or personal property
28 of the estate.

29 (2) ~~Where~~ ~~If~~ posting of notice of a sale governed by Section
30 10250 (sales of personal property) is required or authorized.

31 (3) ~~In any case where~~ ~~If~~ posting of notice is ordered by the
32 court.

33 *SEC. 5. Section 2590 of the Probate Code is amended to*
34 *read:*

35 2590. The court may, in its discretion, make an order granting
36 the guardian or conservator any one or more or all of the powers
37 specified in Section 2591 if the court determines that, under the
38 circumstances of the particular guardianship or conservatorship,
39 it would be to the advantage, benefit, and best interest of the
40 estate to do so. Subject only to ~~such~~ *the* requirements, conditions,

1 or limitations as are specifically and expressly provided, either
2 directly or by reference, in the order granting the power or
3 powers, *and if consistent with Section 2591*, the guardian or
4 conservator may exercise the granted power or powers without
5 notice, hearing, or court authorization, instructions, approval, or
6 confirmation in the same manner as the ward or conservatee
7 could do if possessed of legal capacity.

8 *SEC. 6. Section 2591 of the Probate Code is amended to*
9 *read:*

10 2591. The powers referred to in Section 2590 are:

11 (a) The power to contract for the guardianship or
12 conservatorship and to perform outstanding contracts and thereby
13 bind the estate.

14 (b) The power to operate at the risk of the estate a business,
15 farm, or enterprise constituting an asset of the estate.

16 (c) The power to grant and take options.

17 (d) (1) The power to sell at public or private sale real or
18 personal property of the estate, *other than the personal residence*
19 *of a conservatee.*

20 (2) *The power to sell at public or private sale the personal*
21 *residence of the conservatee as described in Section 2591.5.*

22 (e) The power to create by grant or otherwise easements and
23 servitudes.

24 (f) The power to borrow money and give security for the
25 repayment thereof.

26 (g) The power to purchase real or personal property.

27 (h) The power to alter, improve, and repair or raze, replace,
28 and rebuild property of the estate.

29 (i) The power to let or lease property of the estate for any
30 purpose (including exploration for and removal of gas, oil, and
31 other minerals and natural resources) and for any period,
32 including a term commencing at a future time.

33 (j) The power to lend money on adequate security.

34 (k) The power to exchange property of the estate.

35 (l) The power to sell property of the estate on credit if any
36 unpaid portion of the selling price is adequately secured.

37 (m) The power to commence and maintain an action for
38 partition.

39 (n) The power to exercise stock rights and stock options.

1 (o) The power to participate in and become subject to and to
2 consent to the provisions of a voting trust and of a
3 reorganization, consolidation, merger, dissolution, liquidation, or
4 other modification or adjustment affecting estate property.

5 (p) The power to pay, collect, compromise, arbitrate, or
6 otherwise adjust claims, debts, or demands upon the guardianship
7 or conservatorship.

8 (q) The power to employ attorneys, accountants, investment
9 counsel, agents, depositaries, and employees and to pay the
10 expense.

11 *SEC. 7. Section 2591.5 is added to the Probate Code, to read:*

12 *2591.5. (a) Notwithstanding any other provisions of this*
13 *article, a conservator seeking an order under Section 2590*
14 *authorizing a sale of the conservatee's personal residence shall*
15 *do all of the following:*

16 *(1) Demonstrate to the court that the terms of sale, including*
17 *the price that the property is to be sold, are in all respects in the*
18 *best interests of the conservatee.*

19 *(2) Comply with the provisions of Section 10309 concerning*
20 *appraisal or new appraisal of the property for sale and sale at a*
21 *minimum offer price.*

22 *(3) Obtain court approval of the commissions to be paid from*
23 *the estate at the time the conservator seeks an order under*
24 *Section 2590.*

25 *(b) Within 15 days of the close of escrow, the conservator*
26 *shall serve a copy of the final escrow settlement statement on all*
27 *persons entitled to notice of the petition for appointment for a*
28 *conservator and all persons who have filed and served a request*
29 *for special notice and shall file a copy of the final escrow*
30 *statement along with a proof of service with the court.*

31 *(c) The court may for good cause order a conservator to be*
32 *exempt from compliance with any of the requirements of this*
33 *section.*